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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

LOUISE H. RENNE, et al.,

Petitioners

vs.

BOB GEARY, et. al.,

Respondents

SUDI TRIPPET, Respondent in pro per

ON WRIT OF CERTIORARI TO THE NINTH CIRCUIT

UNITED STATES COURT OF APPEALS

Sudi Trippet
[redacted]
1800 Market #213
San Francisco CA 94102
(415) 547-5433

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San Francisco CA 94102
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SUMMARY OF ARGUMENT

In this case, California has attempted to impose an absolute ban on all speech by political parties, endorsing, supporting or opposing candidates for any non-partisan local school or judicial office.

The plaintiffs in this case, as voters and would-be recipients of such election speech, plainly have standing to challenge the endorsement ban.

The endorsement ban is contrary to settled First Amendment principles as an absolute prohibition against communicating or receiving a certain class of political speech and, as such, is a paternalistic deprivation of voters' right to receive and distribute election speech, as well as parties' and candidates' right to transmit it.

ARGUMENT

As a registered voter and as co-ordinator of an association of registered voters (Election Action), I represent the point of view of the voting public, and in 1987, along with several other registered voters (Bob Geary, Melissa Gundrun, David Soule, Dennis Mark, Robert Silvestri, Wayne Johnson, Max Woods and Peter Johnson), sued the City and County of San Francisco as "would-be recipients of communication of political party endorsements through the voters' pamphlet". (MEMORANDUM OF POINTS AND AUTHORITIES REGARDING STANDING, Geary v. Renne District Court, No. C87 4724AJZ, p.5.

Recipients or potential recipients have First Amendment rights and standing to sue to invalidate unconstitutional restrictions on communication.

> Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the case here, the protection afforded is to the communication, to its source and recipients both. This is clear from the decided cases.

Virginia Pharmacy Board v. Virginia Consumer Council (1976) 425 U.S. 748, 757; emphasis added.

Thus, in numerous cases, it has been held that the would-be recipient of communication may sue to invalidate restrictions on such communication.

In Virginia Pharmacy, supra, at pp.753, fn. 10, 756-757, the Supreme Court held that an individual user of prescription drugs, and two organizations who have members who are users of prescription drugs, had standing to sue to

challenge the constitutionality of a Virginia statute prohibiting advertising of prescription drug prices in their capacity as would-be recipients of such information. The Court made this ruling despite objections that a would-be transmitter of information (i.e. a pharmacist) had not joined in the lawsuit. Virginia Pharmacy, supra, at p. 757, fn. 15.

In Kleindienst v. Mandel (1972) 408 U.S. 753, 759-760, 762-764, the Supreme Court held that a group of university professors had standing to sue to challenge the exclusion of a Belgian socialist from the United States on the (grounds) that an order by the U.S. Attorney General had interferred with the professors' constitutional right to hear Mr. Mandel explain and defend his views.

In Lamont v. Postmaster General

(1965) 381 U.S. 301, the Supreme Court permitted American recipients of publications from communist countries to challenge a statute permitting postal authorities to refrain from delivering "communist propaganda"unless the would-be recipient requested delivery in writing.

Plaintiffs believe that San Francisco County Democratic Central Committee v. March Fong Eu (9th Cir. 1987) 826 F.2d at p. 824, is almost exactly on-point with respect to the standing issue. In Eu, the Court found that individual Democratic and Republican voters had standing to challenge a California statute which bars pre-primary endorsements by political party central committees. The Court noted:

> The state never offers any satisfactory explanation as to why the county committees cannot challenge the statutes prohibiting preprimary endorsements as an infringement of their rights to speak freely. Nor has the state explained why the individual party members cannot challenge these statutes as an infringement of their First Amendment right to listen.

Eu, supra, at p. 824, emphasis partially in original.

In the instant case, all of the plaintiffs are voters, organizations of voters (Election Action), or officers of such associations (Sudi Trippet). They are, therefore, would be recipients of political party endorsements printed in the voters' pamphlet, or representatives of same. As would-be recipients of endorsements that are banned by Cal. Const. Art. II, Section 6(b), plaintiffs plainly have standing to challenge said endorsement ban under the rationale of

Virginia Pharmacy, Mandel, Lamont and Eu. (MEMORANDUM OF POINTS & AUTHORITIES, Geary v. Renne, supra at pp. 4-6.)

On April 3, 1991, I submitted a respondent's reply brief on the questions in this case, which was unfortunately rejected due to technical defects. In that brief, it was stated that:

> (Election Action) respondents represent the view that 6(b) is a paternalistic deprivation of our right to receive election speech in the form of official party slate cards, as well as our right to distribute such speech, and to be hired to do so.

Geary v. Renne, supra, Trippet Reply Brief at p. 5 (Reply Brief attached).

Our view is that election speech is the highest order of free speech and that any restrictions on receiving or announcing that speech are violations of our most precious First Amendment protection to unfettered access to information and free

exchange of ideas about election matters.

6(b) paternalistically reduces the availability of information to the interested, violating freedom to receive speech.

It violates the right to peaceably assemble to discuss politics and the individual's freedom of association and group speech.

Neither a compelling interest nor narrow tailoring can save it, since it is prohibitive rather than regulatory.

Limits on whether, which, whose and to whom opinions may be announced are constitutionally prohibited per se.

As stated in Trippet's Reply Brief:

> 6(b) unconstitutionally makes electoral speech less free than advocacy on religion, history and other subjects. It discriminates against electoral organizations, as compared to religious, civil rights and other groups and speakers. Its ban on advice as to how to vote is intended to shield democracy from free speech, and is audience-based

> discrimination, reducing the freedom to speak to voters, as compared to other audiences. It reduces political liberties as compared to historic standards as understood by the Framers of the Constitution, thus "abridging" freedom of speech.

Trippet Reply Brief, Geary v. Renne, p.4.

Since the right to speak about politics (and especially electoral politics), is protective of all other constitutional rights, it has the utmost urgency among all liberties. If the most influential of voices are not free to speak and be heard about the most important of subjects, is anything secure?

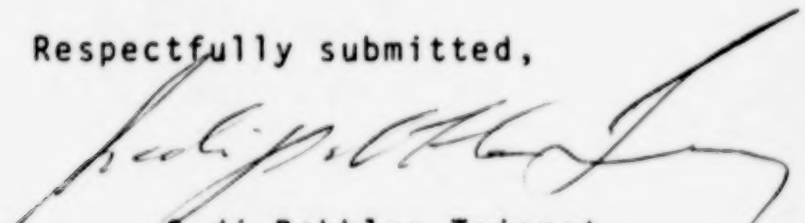
A conservative reading of the Constitution would conserve "freedom of speech", as it historically existed and was historically understood, to be reduced only by Amendment, not by gradual "abridging".

CONCLUSION

For all of the above reasons, the judgment of the Ninth Circuit Court of Appeals, which invalidated California's endorsement ban, must be affirmed.

Dated: April 29, 1991

Respectfully submitted,



Sudi Pebbles Trippet